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Corporations--Noncumulative Dividends (Barclay v. Wabash Ry Co., 30 F.2d 260 (1929))

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not unreasonable⁹ and does not violate any limitation upon the power of the Legislature. These men consented in advance to anything thereafter accomplished by lawful exercise of that power.

CORPORATIONS—NONCUMULATIVE DIVIDENDS.—The Wabash Railway Company for more than three years applied its surplus earnings to working capital and improvements. During this period no dividends were declared on any of its three classes of stock.¹ When, subsequently, the directors decided to pay a dividend to junior stockholders, the owners of Class A stock, which was entitled to "preferential" but "noncumulative" dividends,² sought to restrain this action, claiming that they must first be paid the stipulated rate for each fiscal year in which there were moneys available for distribution. *Held*, for the plaintiff. *Barclay v. Wabash Ry Co.*, 30 F. (2d) 260 (1929).³

In the absence of bad faith, the wisdom of the directors' decision to defer declaration of dividends to improving the condition of the company cannot be questioned.⁴ But, whenever there are earnings in any fiscal year, credit accrues in favor of the noncumulative preferred stockholders.⁵ They are entitled to receive dividends despite the fact that the profits have since assumed the form of rails, cars and other improvements. But deficiencies (in earnings) in one year cannot be made up from earnings in other years.⁶ Cumulative dividends, on the contrary, must be paid regardless of the time when earned.

CRIMES—MURDER IN FIRST DEGREE—EVIDENCE—CONFESSIONS.—Defendants were indicted and convicted of murder in the first degree, committed in an unsuccessful attempt to burglarize a drug

⁹ *Shields v. Ohio*, 95 U. S. 319, 324 (1877); *People v. O'Brien*, 111 N. Y. 1, 52 (1888); *Chicago Mil. & St. P. R. R. Co. v. Wisconsin*, 238 U. S. 491, 502, 35 Sup. Ct. 869 (1915).

¹ Preferred stock class A, preferred stock class B, and common.

² The Certificate of Incorporation states: "The preferred stock A shall be entitled to receive preferential dividends in each fiscal year up to the amount of five per cent. before any dividends shall be paid upon any other stock of this corporation, but such dividends shall be noncumulative."

³ *Rev'g*, 23 F. (2d) 691.

⁴ "When a corporation has a surplus whether a dividend share be made, and if made how much it shall be * * * rest in the fair and honest discretion of the directors uncontrollable by the courts." *Williams v. Western Union Tel. Co.*, 93 N. Y. 162 [quot. with appr. *Equitable L. Assur. Society v. Union Pac. R. Co.*, 212 N. Y. 360, 373, 106 N. E. 92, L. R. A. 1915 D 1052].

⁵ *New York, etc., R. R. v. Nickols*, 119 U. S. 296, 7 Sup. Ct. 209 (1886); *American Steel Foundries v. Lazard*, 204 Fed. 204 (C. C. A. 1913).

⁶ *Fletcher*, *Cyclopedia of The Law of Private Corporation*, Sec. 3754 (1917); *Elkins v. Camden and Atl. R. R. Co.*, 36 N. J. Eq. 233 (1882).